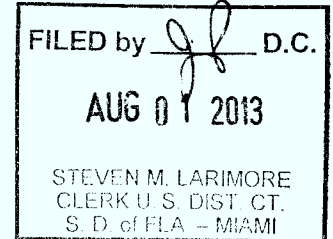


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

13- -CV



MARIO SIMBAQUEBA BONILLA
Plaintiff

V.

CENTRAL INTELLIGENCE AGENCY
Respondent

X

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

INTRODUCTION

1. The Central Intelligence Agency ("CIA") has violated the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, by denying requested documents based on an improper application of a FOIA exception(s), and further, by failing to reply to the Plaintiff's administrative appeal of that denial. This action seeks an order declaring that the CIA acted illegally by failing to respond to the Plaintiff's administrative appeal, and by improperly denying the information requested by Plaintiff, and an order to the Defendant to obey the FOIA by immediately providing the information requested by the Plaintiff; an injunction barring

such violations in the future by the CIA is also requested.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. §552(a)(4)(B).

3. Personal jurisdiction is also proper pursuant to 5 U.S.C. §552(a)(4)(B) as Plaintiff's principal place of business¹, as well as all his criminal and civil actions² are located in the Southern District of Florida.

4. Venue in this Court is proper under 28 U.S.C. §1391(b)(2), and also under 5 U.S.C. §552(a)(4)(B).

PARTIES

5. Plaintiff is a federal prisoner, lives in F.C.I. McRae, and is adversely affected by the Defendant's improper denial of the requested information under the FOIA, and by the Defendant's

1. Plaintiff is proceeding pro-se in all his criminal/civil actions; however, Plaintiff employs on a pro-bono basis the services of a paralegal professional, and a private investigator, both located in Miami; Plaintiff does not have the capacity to pay transportation costs for these persons to any other district.

2. United States v. Bonilla, 07-CR-20897- HUCK; Bonilla v. United States, 12-CV-23507- HUCK/WHITE; Bonilla v. Department of Justice, 10-CV-22168-KING; Bonilla v. U.S. Department of Justice, -COOKE.

illegal failure to reply to the Plaintiff's administrative appeal of the denial; without this information, Plaintiff cannot make sure that federal agencies, including the Defendant CIA, are following the law and their policies.

6. Defendant CIA is a federal agency as described in 5 U.S.C. §552(f)(1). It is responsible for administering several of national security, and is also responsible for responding to FOIA requests and appeals made to it, and so is sued as a defendant in this action.

STATUTORY FRAMEWORK

FOIA

7. The FOIA 5 U.S.C. §552 requires federal agencies to release requested records to the public, unless one or more statutory exemptions apply.

8. 5 U.S.C. §552(a)(6)(A)(ii) requires any federal agency to respond to a FOIA appeal within 20 working days.

9. If the agency fails to comply with the FOIA's response time limits, a constructive exhaustion of the administrative remedies occurs³. 5 U.S.C. §552(a)(6)(c).

3. See e.g., Nurse v. Sec'y of the Air Force, 231 F.Supp.2d 323, 328 (D.D.C.2002) ("FOIA is a unique statute because it recognizes a review upon the expiration of certain relevant FOIA deadlines"); Comptel v. FCC, 2012 WL 6604528* n.5 (D.D.C. 2012) ("The FCC did not comply with statutory response time limits and [plaintiff] thus 'constructively' exhausted administrative remedies").

FACTS GIVING RISE TO PLAINTIFF'S CLAIM FOR RELIEF

10. On February 29, 2012, Plaintiff wrote to the CIA requesting any and all records in the CIA's possession pertaining to Plaintiff.

11. On March 23, 2012, CIA responded to this request requiring Plaintiff to submit additional identifying information required by Title 32 C.F.R. §1901.13 (Ex.A).

12. On April 19, 2012, CIA responded to this request by denying it, asserting privilege of 5 U.S.C. §§ 552 (b)(1), (b)(3) (Ex.B).

13. On March 29, 2012, Plaintiff sent an administrative appeal of that decision to the CIA, which was acknowledged by the agency (Ex.C).

14. 5 U.S.C. §552(a)(6)(A)(ii) requires any federal agency to respond to a FOIA appeal within 20 working days.

15. The CIA failed to respond within 20 working days, and it never responded.

16. 5 U.S.C. §552(a)(6)(c) states: "Any person making a request to any agency for records... shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph.

17. Plaintiff submitted his administrative appeal approximately 420 days ago (1 year and 2 months); the CIA failed to timely act on this appeal.

18. FOIA gives this Court jurisdiction to order the defendant to provide the plaintiff with the records for which he has asked. 5 U.S.C. §552(a)(4)(B).

COUNT ONE

FAILURE TO REPLY TO APPEAL OF FOIA REQUEST DENIAL

19. Paragraphs 1 through 18 are incorporated by reference.

20. Based on the above facts and legal obligations, the defendant was require to respond to plaintiff's administrative appeal of his FOIA request.

21. On or before April 26, 2012, Defendant received the Plaintiff's administrative appeal of the decision to deny Plaintiff's FOIA request. That triggered the 20 working-day time limit in which defendant has to respond to the appeal under 5 U.S.C. §552(a)(6)(A)(ii). That time expired on

22. Because the Defendant has failed to reply to the Plaintiff's administrative appeal of the Defendant's denial of Plaintiff's FOIA request, they are in violation of FOIA.

COUNT TWO

IMPROPER WITHHOLDING OF AGENCY RECORDS

23. Paragraphs 1 through 22 are incorporated by reference.

24. Based on the above facts and legal obligations, Defendant is subject to a duty to provide the records requested by the Plaintiff.

25. Plaintiff has requested agency records that must be released under FOIA, but Defendant has improperly asserted the privilege of 5 U.S.C. §§552(b)(1), and (b)(3) which exempt from disclosure: "information currently and properly classified, pursuant an executive order"; and information "that another federal statute protects...". The requested records are not such records. For this reason, Defendant is in violation of 5 U.S.C. §552(a)(4)(B).

REQUEST FOR RELIEF

For the reasons elucidated above, Plaintiff respectfully requests that this Honorable Court enters judgement providing that:

26. Declare that the Central Intelligence Agency illegally failed to respond to Plaintiff's administrative appeal.

27. Declare that the Central Intelligence Agency was not justified in using the privilege of 5 U.S.C. §§552 (b)(1), and (b)(3) to deny the documents requested by Plaintiff, and thus, improperly withheld agency records from Plaintiff.

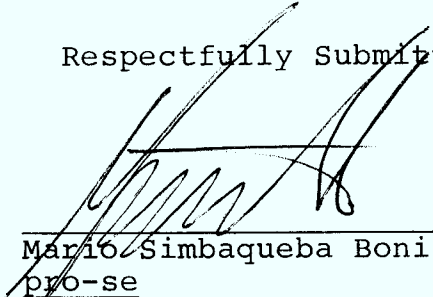
28. Direct by injunction that the Defendant immediately provide the Plaintiff with the records he has requested.

29. Declaratory Judgement that the CIA has violated FOIA and its pattern and practice of delays in disclosing materials to Plaintiff is unlawful and unreasonable.

30. Provide such other relief as the Court deems just and proper.

Dated: 7-29-2013

Respectfully Submitted



Mario Simbaqueba Bonilla
pro-se
Reg. No.
P.O. Drawer 30
McRae, GA 31055

EXHIBIT A

Central Intelligence Agency



Washington, D.C. 20505

23 March 2012

Mr. Mario Simbaqueba Bonilla
Reg No: 78997-004
C. C. A. McRae
P. O. Drawer 30
McRae, GA 31055

Reference: F-2012-00927

Dear Mr. Bonilla:

On 7 March 2012, the office of the Information and Privacy Coordinator received your 29 February 2012 Freedom of Information Act (FOIA) request for records pertaining to yourself. We have assigned your request the reference number above. Please use this number when corresponding so that we can identify it easily.

The Privacy Act requires federal agencies to safeguard personally identifiable information about an individual. CIA's Privacy Regulations, Title 32 C.F.R. § 1901.13, establish the criteria below:

An individual seeking access to or amendment of records about themselves shall provide in the letter of request the full (legal) name, address, date and place of birth, and **current citizenship status together with a statement that such information is true under penalty of perjury or a notarized statement swearing to or affirming their identity.** In the case of an individual who is an alien lawfully admitted for permanent residence, said individual shall provide her or her alien registration number and the date that status was acquired.

Although you have provided most of the necessary biographic information required, we note you list your citizenship as "Alien" but also provide a Social Security number. If you have become a legal permanent resident (LPR) you must provide your LPR number and the date that status was acquired. **You must provide us with this information along with a notarized statement.** You may submit any additional information you wish to help us ensure that our search is as comprehensive and accurate as possible.

We will hold your request in abeyance for 45 days from the date of this letter pending receipt of the information requested above. If we do not hear from you within that period of time we will assume you are no longer interested in the information and will close the request.

Sincerely,

A handwritten signature in black ink, appearing to be "Scott Koch", with a long horizontal line extending to the right.

Scott Koch, J.D., Ph.D.
Acting Information and Privacy Coordinator

EXHIBIT B

Central Intelligence Agency



Washington, D.C. 20505

19 April 2012

Mr. Mario Simbaqueba Bonilla
Reg No: 78997-004
C.C.A. McRae
P. O. Drawer 30
McRae, GA 31055

Reference: F-2012-00927

Dear Mr. Bonilla:

This acknowledges receipt of your 29 March 2012 letter providing additional information concerning your 29 February 2012 Freedom of Information Act (FOIA) request for records pertaining to yourself. Please use the case number referenced above when corresponding so we can identify your case easily.

In accordance with section 3.6(a) of Executive Order 13526, the CIA can neither confirm nor deny the existence or nonexistence of records responsive to your request. The fact of the existence or nonexistence of records is currently and properly classified and is intelligence sources and methods information that is protected from disclosure by section 6 of the CIA Act of 1949, as amended, and section 102A(i)(1) of the National Security Act of 1947, as amended. Therefore, your request is denied pursuant to FOIA exemptions (b)(1) and (b)(3). I have enclosed an explanation of these exemptions for your reference and retention. As the CIA Information and Privacy Coordinator, I am the CIA official responsible for this determination. You have the right to appeal this response to the Agency Release Panel, in my care, within 45 days from the date of this letter. Please include the basis of your appeal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michele Meeks".

Michele Meeks
Information and Privacy Coordinator

Enclosure

EXHIBIT C

Central Intelligence Agency



Washington, D.C. 20505

MAY 16 2012

Mr. Mario Simbaqueba Bonilla
Reg No: 78997-004
C.C.A. McRae
P. O. Drawer 30
McRae, GA 31055

Reference: F-2012-00927

Dear Mr. Bonilla:

We received your 26 April 2012 letter appealing our 19 April 2012 final response to your Freedom of Information Act (FOIA) request for records pertaining to yourself. Specifically, you appealed our determination that we can neither confirm nor deny the existence or nonexistence of records responsive to your request on the basis of FOIA exemptions (b)(1) and (b)(3).

Your appeal has been accepted and arrangements will be made for its consideration by the appropriate members of the Agency Release Panel. You will be advised of the determinations made.

In order to afford requesters the most equitable treatment possible, we have adopted the policy of handling appeals on a first-received, first-out basis. Despite our best efforts, the large number of appeals that CIA receives has created unavoidable processing delays making it unlikely that we can respond within 20 working days. In view of this, some delay in our reply must be expected, but every reasonable effort will be made to respond as soon as possible.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michele Meeks".

Michele Meeks
Information and Privacy Coordinator